

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Office Action dated January 11, 2008. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

In the Office Action, claims 5 and 9-11 are rejected under 35 U.S.C. §112, first paragraph as allegedly failing to comply with the enablement requirement. It alleged that claim 2 recites that the boot sector is stored within the storage unit however, it is respectfully submitted that claim 2 recites no such limitation. While claim 2 does recite a method of downloading software programs into a storage unit, claim 2 makes clear that the software programs include a boot code and an application code yet does not recite that the boot code is a portion of the software programs stored in the storage unit. While claim 2 does recite that a boot sector is defined, again claim 2 does not require that the boot sector be defined within the storage unit. As well supported by the specification, "[the] boot sector ... can even be stored in ROM memory" which clearly is outside the storage unit as recited in claim 5. Accordingly, it is respectfully submitted that claim 5

Patent
Serial No. 10/518,844

Amendment in Reply to Office Action of January 11, 2008

complies with the enablement requirement and an indication to that effect is respectfully requested.

The Office Action rejects claims 13 and 14 under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Applicants respectfully disagree with and explicitly traverse these grounds for rejecting claims 13 and 14. It is the Applicants' position that the claims require statutory subject matter. However, in the interest of furthering the prosecution of this matter, Applicants have elected to amend the claims to more clearly state the invention. Specifically, Applicants have amended claim 13 to more clearly state a computer program stored on a computer readable medium which when received by a receiver, configures the receiver to carry out the method as claimed in any one of claims 1 to 8. Applicants have amended claim 14 to more clearly state a computer program signal stored on a computer readable transmission medium, the computer program signal being arranged to configure a processor to carry out the method as claimed in claim 1. Clearly claims 13 and 14 require statutory subject matter. Accordingly, it is respectfully requested that the rejection of claims 13 and 14 be withdrawn.

Claims 1-9 and 12-15 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2001/0011347 to Narayanaswamy ("Narayanaswamy") in view of an article entitled "Fully Reprogrammable Fault-Tolerant FLASH Memory System" printed on an IBM Technical Disclosure Bulletin ("IBM"). Claims 10 and 11 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Narayanaswamy in view of IBM in view of U.S. Patent No. 6,205,458 to Hasburn ("Hasburn"). It is respectfully submitted that claims 1-15 are allowable over Narayanaswamy in view of IBM alone and in view of Hasburn for at least the following reasons.

It is undisputed that Narayanaswamy "does not disclose that the new boot code is downloaded in the section that has the current application code and overwrites the current application code." (See, Office Action, page 4, lines 16-18.)

IBM shows a "FLASH drive [partitioned] into two blocks and allowing the block locations to be interchanged via paging, [wherein] either of the two blocks can be used as the boot block." (See, IBM, page 1, paragraph 5.) As shown in the figure on page 4 and the lines that follow therein below, a non-boot block's write protection is disabled (see, #1), erased (see, #2), reprogrammed

with new critical code (see, #3) and re-protected (see, #4). Thereafter a page table is reprogrammed to point to the new critical code (see, #8) and the old boot block's write protection is disabled (see, #10), the old boot block erased (see, #11) and reprogrammed with new non-critical code (see, 12).

The Office Action has taken a position that page 4 of IBM shows "replacing the current boot code with the new boot code at the first position and then jumping to the first position" as recited in claim 3, however it is respectfully submitted that reliance on this section of IBM is misplaced. As pointed out above, what is shown by IBM is replacement of the old critical code (boot code) with new non-critical code. Since IBM in effect shows two blocks that are swapped one for the other as critical, with the non-critical block being available for new non-critical code but not for the new critical code. If the non-critical block were to receive a newer critical code, the (old) new critical block would then also thereafter be made available for non-critical code (see, discussion above regarding page 4, numbered paragraphs 1-13 and particularly, paragraph 12).

It is respectfully submitted that the system of Claim 1 is not anticipated or made obvious by the teachings of Narayanaswamy in

view of IBM alone and in view of Hasburn. For example, Narayanaswamy in view of IBM alone and in view of Hasburn does not disclose or suggest, a system that amongst other patentable elements, comprises (illustrative emphasis provided) "a current boot code in a first location, the method comprising the following steps: upon a download request, downloading a new boot code in a second location, which does not overwrite the current boot code and does overwrite a current application code, indicating that the new boot code in the second location replaces the current boot code, writing the new boot code in place of the current boot code in the first location, indicating that the new boot code written in the first location replaces the new boot code written in the second location, downloading a new application code associated to the new boot code in a location, which does not overwrite the new boot code in the first location, indicating that the new application code is valid" as required by claim 1, and as substantially required by claim 2.

IBM merely shows that once the old critical code is replaced by new critical code, the old critical code may be replaced by non-critical code or a newer critical code than the new critical code. IBM does not disclose or suggest that subsequent to the new

critical code being indicated as critical in the second location, the new critical code replaces the old critical code in the first location and is then indicated as critical in the first position replacing the new critical code in the second position. Hasburn does nothing to cure the deficiencies in Narayanaswamy.

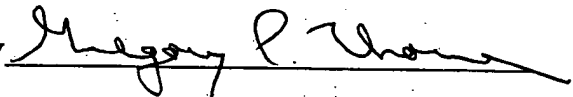
Based on the foregoing, the Applicants respectfully submit that independent claims 1 and 2 are patentable over Narayanaswamy in view of IBM alone and in view of Hasburn and notice to this effect is earnestly solicited. Claims 3-15 respectively depend from one of Claims 1 and 2 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position,

should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Gregory L. Thorne, Reg. 39,398
Attorney for Applicant(s)
April 7, 2008

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101